IN THE HIGH COURT OF JUDICATURE, ANDHRA PRADESH
AT HYDERABAD

(Special Original Jurisdiction)

WEDNESDAY, THE SIXTH DAY OF APRIL
TWO THOUSAND AND FIVE

PRESENT

THE HON'BLE MS JUSTICE G.ROHINI

WRIT PETITION NO : 7269 of 2005

Between:

K.Vema Reddy S/o.K.Rosi Reddy
R/o.7/68, J.Kothapalli Village, Kamalapur Mandal,
Kadapa District A.P.

..... PETITIONER

AND

1 Government of Andrha Pradesh rep. by its Secretary Panchayat Raj and R.D. Secretariat Building Secretariat, Hyderabad.
2 Election Commissioner for State of Andhra Pradesh, O/o.Election Commissioner,
3rd Floor, Budha bhavan, M.g.Road, Secunderabad-3.A.P.
3 The Commissioner O/o.The Panchayat Raj Department,
Hyderabad.
4 The District Panchayat Officer, O/o.The District Panchayat Officer, Kadapa A.P.

.....RESPONDENTS

Petition under Article 226 of the constitution of India praying that in the circumstances stated in the Affidavit filed herein the High Court may be pleased to pass appropriate order or direction more particularly are in the nature of writ of Mandamus declaring the action of the respondent No.2 in issuing the impugned notification No.165/SEC-B2/2005-2 Dt.24.2.2005 as illegal, contrary to law and in violation of Principles of natural justice consequently to set aside the impugned notification of the 2nd respondent herein vide No. 165/SEC-B2/2005-2 dt.24.2.2005 in so far as the petitioner village ie. Jambapuram in Kamalapuram Mandal in Kadapa District is concerned and direct the respondent No.1 to 4 not to conduct the Elections till the General Elections and also pass such other order or orders.

Counsel for the Petitioner : SMT. P.REVATHI

Counsel for the Respondents 1, 3 and 4: GP FOR PANCHAYAT RAJ & RURAL

DEV.

Counsel for the Respondent No.2: Mr.K.G.K.PRASAD

The Court at the stage of admission made the following :

THE HON'BLE MS. JUSTICE G.ROHINI

WRIT PETITION NO.7269 OF 2005

ORDER:

The petitioner was elected as a Member of Jambapuram Gram Panchayat, Kamalapuram Mandal, Kadapa District and subsequently he was also elected as the Upa-sarpanch.

One Sri P.Bhaskara Reddy, who was elected as Sarpanch of the said Gram Panchayat tendered resignation to the Office and consequently a casual vacancy arose. By virtue of the orders of the District Panchayat Officer, Kadapa dated 30-1-2005 the petitioner has been discharging the functions of the Sarpanch. While so, the 2nd respondent – State Election Commission in exercise of the powers conferred under Article 243-K of the Constitution of India read with Section 11 of the A.P. Panchayat Raj Act, 1994 (for short, 'the Act') and the Rules made thereunder (for short, 'the Rules'), issued a notification dated 24-02-2005 directing the District Panchayat Officer, Kadapa to prepare and publish the electoral roll of the Gram Panchayat on 5-3-2005 with reference to 1-1-2005 as qualifying date so as to conduct the elections to fill up the casual vacancy of the Sarpanch of Jambapuram

Gram Panchayat and to publish the same on 5-3-2005. The said notification is under challenge in this writ petition contending that the in-charge Sarpanch as well as the Ward Members of the Gram Panchayat having discussed the issue and taking into consideration the financial position of the Gram Panchayat decided to request the Government to postpone the election to their Gram Panchayat till the General Election scheduled be conducted in August, 2006 and accordingly made a representation to the District Panchayat Officer. It is pleaded that the request in the said representation, to continue the Ward Members as well as in-charge Sarpanch till the General Elections are held, has not been considered by the respondents so far and therefore if further proceedings are taken on the basis of the impugned notification, the petitioner and other ward members stand to suffer irreparable injury. Hence, this writ petition.

Having heard the learned Counsel for the petitioner and on a perusal of the material on record, I do not find any substance in any one of the contentions raised by the petitioner. Under sub-Section (4) of Section14 of the A.P. Panchayat Raj Act, 1994, any casual vacancy in the Office of the Sarpanch shall be filled within 120 days from the date of occurrence of such vacancy by a fresh election under Section 14(1) of the Act. It is true that such election to casual vacancy is subject to the provisions of sub-Section (5) of Section 14 of the Act which provides that unless the Commissioner otherwise directs no casual vacancy in the Office of the Sarpanch shall be filled within six months before the date on which the ordinary election of the Sarpanch under sub-Section (1) of Section 14 of the Act is due. However, it is not in dispute that sub-section (5) of Section 14 of the Act does not attract to the case on hand. If that be so, it is mandatory to fill up the casual vacancy within 120 days as specified under sub-Section (4) of Section 14 of the Act. The impugned notification issued by the 2nd respondent is in consonance with the said provision. Hence, no Mandamus can be issued compelling the petitioners to act in contravention of the statutory provisions. The Writ Petition filed by the Upa-sarpanch, who is discharging the functions of the Sarpanch, is misconceived and does not deserve any consideration.

Accordingly, the Writ Petition is dismissed. No costs.

6th April, 2005.

gbs

To

1 The Secretary, Government of Andrha Pradesh rep. by its Secretary Panchayat Raj and Rural Development, Secretariat Building Secretariat, Hyderabad.
2 The Election Commissioner for State of Andhra Pradesh, O/o.Election Commissioner, 3rd Floor, Budha bhavan, M.g.Road, Secunderabad-3.A.P.
3 The Commissioner O/o.The Panchayat Raj Department, Hyderabad.
4 The District Panchayat Officer, O/o.The District Panchayat Officer, Kadapa A.P.

5. Two CCs to GP. for Panchayat Raj & Rural Development, High Court of AP Bldgs, Hyderabad (OUT).

6. Two CD copies.